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8 CHURCH OF SCIENTOLOGY INTERNATIONAL

9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 In re	)	CASE NO. 95-10911 aj
	)	
12 GERALD ARMSTRONG,	)	Chapter 7
	)	
13 Debtor	)	Adv. No. 95-1164
	)	
14	)	PLAINTIFF CHURCH OF
	)	SCIENTOLOGY
15 CHURCH OF SCIENTOLOGY	)	INTERNATIONAL'S REPLY
INTERNATIONAL, a California non-	)	IN SUPPORT OF MOTION TO
16 profit religious corporation,	)	STRIKE DEFENDANT GERALD
	)	ARMSTRONG'S AMENDED
17	)	ANSWER
Plaintiff,	)	
18	)	[B.R. 7008; F.R.C.P.
	)	8(b), (c), (e); B.R.
19 v.	)	7012(b); F.R.C.P.
	)	12(f)]
20	)	
GERALD ARMSTRONG,	)	DATE: October 6, 1995
21	)	TIME: 11:00 a.m.
	)	CTRM: Alan Jaroslavsky
22 Defendant.	)	
	)	

1 In response to plaintiff and creditor Church of Scientology  
2 International ("the Church")'s motion to strike his answer,  
3 defendant and debtor Gerald Armstrong has done two things: (1)  
4 he filed an opposition with this Court after the filing deadline  
5 had passed and then mail-served it on plaintiff's counsel, and  
6 (2) he filed a "Second Amended Answer," without leave of court,  
7 which fails to cure any of the defects complained of in  
8 plaintiff's moving papers, and, indeed, **expands** on the "First  
9 Amended Answer" by **adding 20 pages of text, and 15 pages of**  
10 **exhibits.**

11 Armstrong's late-filed opposition does not respond in any  
12 meaningful way to the Church's straightforward motion, or to any  
13 of the authority cited therein. Instead, Armstrong takes  
14 fourteen pages to explain to this Court that he would like to use  
15 this courtroom as a forum to re-litigate the issues resolved in 2  
16 cases spanning more than a decade, one of which was resolved by  
17 settlement in 1986, and one of which is in the process of  
18 resolution by the Marin County Superior Court.

19 Armstrong's opposition demonstrates precisely why it is that  
20 plaintiff has filed this motion. The Church is mindful that this  
21 Court indicated that it is not likely to follow the many  
22 tangential paths that are the woof and warp of Armstrong's  
23 answer, and understands the Court's view that a motion to strike  
24 may not even have been necessary. The Church is also mindful,  
25 however, that Armstrong will do anything he can imagine to expand  
26 this litigation and increase costs and time for both the Court  
27 and the Church. Cutting the pleadings -- the very basics of the  
28



1 case -- to the essential issues will make it simpler to confine  
2 discovery and trial to those issues which are actually  
3 material.<sup>1</sup> Armstrong's discussions with God; his generalized  
4 attacks on Scientology theology, based on his distorted  
5 interpretation of Scientology scripture; his unhappiness with the  
6 four judges who have previously determined that his settlement  
7 agreement with the Church was valid and binding; his view that  
8 the Church is "harrassing" him by successfully litigating against  
9 him -- none of these are relevant to this bankruptcy proceeding,  
10 and the inclusion of them will only serve to prolong discovery,  
11 and prevent a rapid, final resolution. Armstrong's insistence  
12 that the Church is refusing to confront the "truth" is a dark  
13 reflection of his own inability to take responsibility for his  
14 actions: the bottom line is that Armstrong defrauded the Church  
15 out of \$800,000, with no intention of keeping his bargain, and,  
16 having done so, has squandered or hidden all of his assets. His  
17 apparent hope is that the Church will pay him still more money to  
18 keep his bargain, if he says enough false and negative things  
19 about the Church in enough places. This Court need not be one of  
20 those places. His lengthy allegations are not material to any  
21 issue in the case, and should be stricken.

22 "Immaterial" matter is that which has no essential  
23 or important relationship to the claim for relief or  
24 the defenses being pleaded. "Impertinent" matter  
consists of statements that do not pertain, and are not

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25 <sup>1</sup> Armstrong already has, for example, served a document request  
26 on the Church which seeks 144 categories of documents. His  
27 refusal to comply with discovery procedures forced the Church to  
28 file a motion for protective order, which is set for hearing on  
October 13, 1995.



1 necessary, to the issues in question. Superfluous  
2 historical allegations are a proper subject of a motion  
to strike.

3 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993).

4 Armstrong's "Second Amended Complaint" was filed without  
5 leave of Court, in derogation of Federal Rules of Civil Procedure  
6 Rule 15, and should be stricken on that basis alone. In  
7 addition, it has cured none of the defects complained of in the  
8 moving papers. If anything, it has compounded them.

9 All of the lengthy attacks on the Church, its theology, its  
10 members, its counsel and the judges who have ruled in its favor  
11 remain. Moreover, Armstrong still has not admitted or denied  
12 that this is a core proceeding, as he is specifically required to  
13 do by the Bankruptcy Rules. Further, Armstrong's additions to  
14 his "affirmative defenses" do not cure the defect complained of.  
15 "[A]ffirmative defenses must set forth a 'short and plain  
16 statement' of the defense asserted. If an affirmative defense is  
17 insufficient on its face, or comprises no more than 'bare bones  
18 conclusory allegations,' it must be stricken." Id. at 613-614  
19 (emphasis supplied). Flasza v. TNT Holland Motor Express, Inc.,  
20 155 F.R.D. 612, 613 (N.D.Ill.1994). In Flasza, the Court held  
21 that affirmative defenses which merely recited the legal  
22 standards applicable to the defense were insufficient, and  
23 ordered them stricken. For example, the defendant's first  
24 affirmative defense merely recited the conclusory allegation that  
25 the complaint failed to state a claim upon which relief can be  
26 granted. This is precisely the same barebones allegation that  
27 Armstrong makes as his first affirmative defense. [2nd.Amd.Cmplt.



1 p.39]

2       Where Armstrong has recited some basis for his claimed  
3 affirmative defense, it is nonsensical, and bears no relation to  
4 these proceedings. E.g., in his Second Affirmative Defense  
5 ("This Court Cannot Enjoin the Practice of a Profession"),  
6 Armstrong states "Plaintiff, moreover, seeks to prevent defendant  
7 from pursuing his profession of prophesy, and defendant is  
8 actively engaged in such profession." [Id. at 40] There is, of  
9 course, no request for injunctive relief contained in the  
10 Church's complaint at all.

11       Accordingly, the Church requests that Armstrong's "Amended  
12 Answer" and "Second Amended Answer" be stricken, and that  
13 Armstrong be given leave to amend only on the condition that he  
14 restrict his pleading to the issues actually presented by this  
15 action, with extraneous, scandalous, and immaterial allegations  
16 and immaterial affirmative defenses excluded.

17 Dated: September 29, 1995       Respectfully submitted

18                                   WILSON, RYAN & CAMPILONGO

19  
20                                   By: 15/  
21                                   Andrew H. Wilson

22                                   Laurie J. Bartilson  
23                                   BOWLES & MOXON

24                                   Attorneys for Plaintiff  
25                                   CHURCH OF SCIENTOLOGY  
26                                   INTERNATIONAL

27

28

PROOF OF SERVICE

STATE OF CALIFORNIA       )  
                                  ) ss.  
COUNTY OF LOS ANGELES    )

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On September 29, 1995, I served the foregoing document described as PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

Gerald Armstrong  
715 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

Linda Sorensen  
Feldman, Waldman & Kline  
2700 Russ Bldg.  
235 Montgomery St.  
San Francisco, CA 94104-3160

[X] BY MAIL

[ ] \*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.



1 Executed on September 29, 1995, at Los Angeles,  
2 California.

3 [ ] \*\*(BY PERSONAL SERVICE) I delivered such  
4 envelopes by hand to the offices of the  
addressees.

5 Executed on \_\_\_\_\_, at Los Angeles, California.

6 [X] (State) I declare under penalty of the laws  
7 of the State of California that the above is true  
and correct.

8 [ ] (Federal) I declare that I am employed in the  
9 office of a member of the bar of this court at  
whose direction the service was made.

10 Abel E. Munera

11 Print or Type Name

Abel E. Munera

Signature

12 \* (By Mail, signature must be of person depositing  
13 envelope in mail slot, box or bag)

14 \*\* (For personal service signature must be that of  
15 messenger)